

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 2: Rio Ojo Caliente

Subfile No. 44.1
El Vadito Ditch

**MOTION TO VACATE DEFAULT ORDER
AS TO ENCARNACION JARAMILLO IN SUBFILE NO. 44.1**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) and respectfully requests the Court to vacate the Order filed November 1, 1971 (Docket No. 1812C) as to Defendant ENCARNACION JARAMILLO and as grounds states as follows:

1. On November 1, 1971 the Court entered a default order in Section 2, Ojo Caliente, adjudicating the water rights of numerous defendants including those of Encarnacion Jaramillo under Subfile No. 44.1. The default order determined that Encarnacion Jaramillo was without water rights for 9.81 acres of land under the El Vadito Ditch (“No Right on 9.81 acres”).
2. Encarnacion Jaramillo was not the owner of the land mapped as Subfile No. 44.1 at the time the default order was entered, nor was he owner of the land at the time he was served by the State in connection with these proceedings (April 23, 1969).
3. The default order entered against Encarnacion Jaramillo in connection with Subfile No.

44.1 is void and without effect.

4. The true owner of the 9.81 acre tract of land, Juan Santiago Griego, contacted the State Engineer in January 1972 in order to correct these errors, and to claim valid irrigation water rights for the land in question. The records of the State Engineer indicate that these matters were never concluded. Although the State Engineer recognized that Mr. Griego was the owner of the tract, and that the default order had been entered in error, the default order was not set aside or vacated. There has been no entry of a partial final decree for the Ojo Caliente Section, and individual subfile proceedings in this section have not been concluded.

5. Although the State is unable to review a claim for valid irrigation water rights in Section 2 for the 9.8 acre tract of land at this time, the State believes that the Court should vacate the default order as to Encarnacion Jaramillo to clear the record. The heirs and Estate of Juan Santiago Griego have requested this action.

6. The State will address the claim for irrigation water rights for the 9.8 acre tract of land under Subfile No. 44.1 after the State again begins to address individual subfile claims in Section 2.

WHEREFORE the State of New Mexico *ex rel.* State Engineer respectfully requests the Court to vacate the Order filed November 1, 1971 (Docket No. 1812C) as to Encarnacion Jaramillo, and only as to Encarnacion Jaramillo, in connection with Section 2, Ojo Caliente Subfile No. 44.1

Respectfully submitted,

/s/ Ed Newville
EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I hereby certify that copies of the above Motion to Vacate Default Order as to Encarnacion Jaramillo in Subfile No. 44.1 were mailed to following persons on August 13, 2004.

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 87504-2384

Karla McCall, Data Manager.
1315 Sagebrush Dr. SW
Los Lunas, NM 87031

Mary E. Humphrey, Esq.
P.O. Box 1574
El Prado, NM 87529-1574

Estate of Juan Santiago Griego
c/o Chester Griego
548 Juniper Dr.
Santa Fe, NM 87501